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*Attorneys for Defendant
Wal-Mart Stores, Inc.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BONNIE BAKER, individually,

Plaintiff,

vs.

WAL-MART STORES, INC.; DOES I-V; AND
ROE CORPORATIONS I-V, inclusive,

Defendants.

Case No.:

[District Court, Clark County Case No.: A-19-
804139-C, Dept. No.: XXIV]

**DEFENDANT WAL-MART STORES INC.'s
PETITION FOR REMOVAL OF CIVIL
ACTION**

[JURY DEMAND]

COMES NOW, Petitioner WAL-MART STORES, INC. (hereinafter "Defendant" or "Walmart"), by and through its counsel of record, the law offices of PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submits the following memorandum in support of its Petition for Removal of Jurisdiction to Federal Court:

I.

Petitioners are the sole named Defendants in the above-captioned action.

II.

The above-entitled action was commenced by Plaintiff BONNIE BAKER (hereinafter "Plaintiff") on October 22, 2019, in the Eighth Judicial District in and for Clark County, District of Nevada. This case is currently pending in that court. Plaintiff served her Summons on Petitioner Walmart October 29, 2019. True and correct copies of Plaintiff's operative Complaint and Summons

1 are attached hereto as **Exhibits “A” and “B” respectfully**. After Defendants filed a timely Answer, this
2 matter was assigned to Nevada’s statutory arbitration program. On December 3, 2019, the Arbitration
3 Selection List was sent to both parties and, on the same day, Plaintiff filed her untimely Petition for
4 Exemption from Arbitration, attached as **Exhibits “C.”**

5 In her Petition for Exemption, Plaintiff, for the first time, confirmed that she intends to seek
6 more than \$75,000 in damages in this case, including past medical specials totaling **\$199,875.59**, stating:

7
8 As is evidenced by the injuries diagnosed by Plaintiff’s healthcare providers,
9 together with the significant medical expenses incurred by Plaintiff and the future
cost of treatment, Plaintiff’s case has a probable jury award value in excess of
\$50,000.

10 *See* Petition for Exemption Exhibit “C,” at 2:14-20. This Petition for Exemption constitutes the “first
11 paper” received by Petitioner from which removability may clearly be ascertained and that the amount
12 in controversy in this action exceeds \$75,000.00. As such, the 28 U.S.C. §1446(b)’s \$75,000 amount in
13 controversy requirement is met and as a year has not yet passed since Plaintiff filed her Complaint on
14 October 22, 2019, this Petition is timely.

15 III.

16 This Petition is filed pursuant to 28 U.S.C. § 1446(b).

17 IV.

18 This is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332(a) and
19 is one which may be removed to this Court by Petitioner, pursuant to 28 U.S.C. § 1441(a).

20 V.

21 Petitioner is informed, believes, and thereon alleges that Plaintiff is, and was at the time this
22 action was commenced, a citizen of the State of Oregon.

23 VI.

24 Petitioner Walmart is, and was at the time this action was commenced, a Delaware corporation
25 with their principal places of business in the State of Arkansas. As such, Petitioner Walmart is a citizen
26 of the State of Delaware and a citizen of the State of Arkansas.

27 ...

28 ...

VII.

The above-entitled civil action is for personal and economic damages Plaintiff allegedly incurred after slipping and falling at Walmart Store No. 2593 located at 2310 E. Serene Avenue, Las Vegas, NV (Clark County).

VIII.

A copy of Petitioners' Petition for Removal of Civil Action, seeking removal of the above-entitled action to the United States District Court, District of Nevada, together with a copy of the Summons and Plaintiff's Complaint, have been deposited with the Deputy Clerk in the County Clerk's office for the Eighth Judicial District Court in and for Clark County, Nevada.

IX.

True and correct copies of all pleadings and papers served upon Petitioner in the above-entitled action are filed herewith.

X.

This Petition is filed with the Court within thirty (30) days after Plaintiff first confirmed in her Petition for Exemption that the amount in controversy exceeds \$75,000 as Plaintiff is alleging **\$199,875.59** in past medical specials alone. Exhibit "C," at 2:14. The Petition for Exemption constitutes the "first paper" that put Petitioners on notice that Plaintiff's claimed damages clearly exceed the \$75,000 federal diversity jurisdiction threshold. Therefore, Plaintiff's anticipated damages meets 28 U.S.C. §1332(b)'s amount in controversy requirement. *See* 28 U.S.C. §1332(a) (2015); *see also Crum v. Circus Circus Enters.*, 231 F.3d 1129, 1131 (9th Cir. 2000) (reversing dismissal for lack of jurisdiction, relying, in part, on estimated future medical expenses to determine that the amount in controversy exceeded the jurisdictional amount); *see also Lockett v. Delta Airlines, Inc.*, 171 F. 3d 295, 298 (5th Cir. 1999) (holding that it was facially apparent from plaintiff's Complaint that claims exceeded \$75,000.00 where plaintiff alleged property damage, travel expenses, an emergency ambulance trip, a six-day hospital stay, pain and suffering, humiliation and a temporary inability to do housework); *see also White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir. 2003) (holding that it was facially apparent that plaintiff's wrongful termination exceeded \$75,000.00 based on the lengthy list of compensatory and punitive damages combined with a claim for attorney fees in her Complaint). As

1 such, it is wholly reasonable that Plaintiff's cumulative claims for damages and the diversity of the
2 parties meet the requisite requirements set forth by 28 U.S.C. §1441(b) and 28 U.S.C. §1332.

3 **PRAYER**

4 WHEREFORE, Petitioner prays that the above-entitled action be removed from the Eighth
5 Judicial District Court in and for Clark County, Nevada, to this Court.

6 DATED this 26th day of December, 2019.

7 **PHILLIPS, SPALLAS & ANGSTADT LLC**

8 */s/ Megan E. Wessel*

9 _____
10 ROBERT K. PHILLIPS, ESQ.

11 Nevada Bar No. 11441

12 MEGAN E. WESSEL, ESQ.

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14 504 South Ninth Street

15 Las Vegas, Nevada 89101

16 (702) 938-1510

17 *Attorneys for Defendant*

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of December, 2019, I served a true and correct copy of the foregoing, **DEFENDANT WAL-MART STORES, INC.'S PETITION OF REMOVAL TO FEDERAL COURT**, as follows:

☐ By facsimile addressed to the following counsel of record, at the address listed below:

☐ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☐ By Hand Delivery (ROC); and/or

☒ By Electronic Filing/Service Notification through Odyssey File & Serve to:

ATTORNEY OF RECORD	TELEPHONE/FAX	PARTY
Joshua L. Benson, Esq. BENSON ALLRED, PLLC 6250 N. Durango Drive Las Vegas, NV 89148 josh@bensonallred.com	P: (702) 820-0000 F: (702) 820-1111	Plaintiff

/s/ Joshua J. Kephart

An Employee of PHILLIPS, SPALLAS & ANGSTADT, LLC